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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Regina B. Edwards
Attorney, City of Wetumpka
109 East Bridge Street
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Municipalities – Health Care Authorities –
Medical Clinics – Leases – Public Purposes
Land Sales Law – Elmore County

The City of Wetumpka is authorized to lease property for a maximum term of 99 years, pursuant to section 11-47-21 of the Code of Alabama.

The city is authorized to enter into a long-term lease with the Elmore County Health Care Authority ("Authority") for less than adequate consideration and allow the Authority to sublease the property to a private entity for use as a medical clinic and medical office complex.

Under the facts outlined, because the property is subject to the Land Sales Act, the sublease to a private entity within three years of the transfer of the property to the city by the state requires the Authority to use a competitive bid process.

Dear Ms. Edwards:

This opinion of the Attorney General is issued in response to your request on behalf of the City of Wetumpka.

QUESTIONS

Can the City of Wetumpka lease the Armory property for a term that extends for fifty years or more?

Can the city enter into a long-term lease with the Elmore County Health Care Authority and allow it to sublease the property to a private entity for use as a medical clinic and medical office complex at a less-than-fair market rate for rent?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that the City of Wetumpka has recently been conveyed the old Armory property, subject to the requirement that the property be utilized for a public purpose. The city has been approached about leasing the property as a medical clinic and medical office, but the city does not currently have the infrastructure, such as a medical clinic board, that could oversee the expansion of medical services to the community. In your request, you noted that the Elmore County Health Care Authority has broad powers to lease property and otherwise make provisions to assist with the establishment and delivery of medical services to the citizens of the county.

Sections 11-47-20 and 11-47-21 of the Code of Alabama authorize a city, by ordinance entered on its minutes, to dispose of or lease real property owned by the city that is not needed for public or municipal purposes. ALA. CODE §§ 11-47-20 & 11-47-21 (2008). Section 11-47-21 of the Code specifically authorizes a city to enter into a lease term for a maximum of 99 years. ALA. CODE § 11-47-21 (2008). Accordingly, the city may lease the Armory property for a period that exceeds fifty years, but the lease period may not be for a term longer than 99 years.

You also question whether the city may lease the property to the Authority for less than adequate consideration or fair market value. Section 94 of the Recompiled Constitution of Alabama, as amended, prohibits a city from granting money or other thing of value in aid of a private individual, corporation, or association. ALA. CONST. art. IV, § 94 (amend. 558). Section 94, however, does not prohibit one political subdivision from granting property to another political subdivision. The Authority is a public corporation organized pursuant to section 22-21-310, *et seq.*, of the Code of Alabama. ALA. CODE §§ 22-21-310 to 22-21-344 (2015). Accordingly, the city may transfer or lease property to the Authority for less than adequate consideration. Opinions to Honorable Robert L. Potts, President, University of North Alabama, dated April 8, 2004, A.G. No. 2004-115, at 3; Honorable Broox G. Garrett, Jr., Attorney, Escambia County Board of Education, dated November 25, 2002, A.G. No. 2003-039.

The Armory property was deeded to the city by the Department of Corrections. Because this parcel was previously state land, it is the opinion of this Office that the property is subject to the Land Sales Act ("Act"), which is codified at section 9-15-70, *et seq.*, of the Code of Alabama. ALA. CODE §§ 9-15-70 to 9-15-84 (2001, Supp. 2015). The Act generally requires all sales and leases made by or on behalf of the State of Alabama, or any department, board, bureau, commission, institution, corporation, or agency of the state having a value of more than \$20,000 to be made by free and open competitive bidding. ALA. CODE § 9-15-71 (2001).

Exceptions to the Act are found within section 9-15-82 of the Code of Alabama. ALA. CODE § 9-15-82 (Supp. 2015). Section 9-15-82(b) states, in pertinent part, as follows:

(b) . . . Provided that nothing herein contained shall be construed to apply in any manner to the *sale or lease of any real property* or interest therein *owned by the State of Alabama* and the departments, boards, bureaus, commissions, instrumentalities, corporations, and agencies of the state *to the United States government, any county or municipal board of education, any county or municipal governing body or any of their* respective boards, agencies, departments, corporations, or *instrumentalities* including corporations and/or boards in regard to which any county or municipal governing body is a determining or appointing authority, *subject to the condition that such property or any interest therein is not resold, leased, or otherwise transferred in whole or in part, within three years, to any private person, firm, or corporation without compliance with the provisions of this article.*

ALA. CODE § 9-15-82(b) (Supp. 2015) (emphasis added).

Section 9-15-82(b) generally states that transfers between certain governmental entities are exempt on the condition that, if the property or interest is resold, leased, or transferred to any private person, firm, or corporation within three years, the property must be resold, leased, or transferred in compliance with the Act.

This Office has previously been asked whether the condition of competitive bidding set out in the Act is limited to the first transfer after the exempt transfer or if the condition runs with any subsequent transfer between

governmental entities so that the first transfer from one of the entities to a private entity triggers the Act. In response, this Office determined that if land is transferred from the state to another covered governmental entity, which entity then transfers it to a private entity, the transfer to the private entity would be subject to bidding. Opinion to Honorable Lowell Barron, Member, Alabama State Senate, dated October 22, 2008, A.G. No. 2009-008.

A health care authority is an instrumentality of its authorizing subdivision, the city council or the county commission. *Garrett* at 3. As such, a lease between the city and the Elmore County Health Care Authority would be exempt, but the sublease of this property to a private entity within three years of the first exempt transfer, i.e., the transfer from the state to the city, requires competitive bidding.

CONCLUSION

The City of Wetumpka is authorized to lease property for a maximum term of 99 years, pursuant to section 11-47-21 of the Code of Alabama.

The city is authorized to enter into a long-term lease with the Elmore County Health Care Authority for less than adequate consideration and allow the Authority to sublease the property to a private entity for use as a medical clinic and medical office complex.

Under the facts outlined, because the property is subject to the Land Sales Act, the sublease to a private entity within three years of the transfer of the property to the city by the state requires the Authority to use a competitive bid process.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:


G. WARD BEESON, III
Chief, Opinions Section